

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) CASE NO.
)
 SEMINOLE FERTILIZER CORPORATION,)
)
 Defendant.)
)

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendant, and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed under Section 4 of the Sherman Act, 15 U.S.C. § 4, as amended, in order to prevent and restrain violations by defendant of Section 1 of the Sherman Act, 15 U.S.C. § 1, and this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337.

2. At the time of the alleged violation, defendant conducted business in the Middle District of Florida within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391. Some of the

unlawful acts described herein were conceived, performed, or made effective within Hillsborough County, Florida.

II.

DEFENDANT

3. Until all of its assets were sold in May 1993, defendant was one of the largest domestic manufacturers of diammonium phosphate, the leading internationally traded phosphatic fertilizer. Before its assets were sold, defendant maintained its corporate offices in Stamford, Connecticut, and operated production and storage facilities in central Florida, near Tampa. Defendant was one of the largest suppliers of phosphatic fertilizers in the world, and was a major supplier to customers in China, India, and Pakistan, among other countries.

III.

TRADE AND COMMERCE

4. Phosphatic fertilizer is sold to retailers and end-users by manufacturers and distributors throughout the United States. Manufacturers and distributors of phosphatic fertilizer, including defendant, sell or transport phosphatic fertilizer to customers located throughout the United States as well as outside the United States.

5. Ammonia, a primary component of diammonium phosphate fertilizer, is stored in large tanks and transported via pipeline, railway, ship, or truck to facilities located inside

and outside of the United States that produce phosphatic fertilizer.

6. The ammonia tank and pipeline interest that is the subject of this cause of action is located in the Port of Tampa, Florida (hereinafter referred to as the Tampa Facility). At the time of the alleged violation, ammonia stored at the Tampa Facility was sold to manufacturers and distributors of phosphatic fertilizers located throughout the United States as well as outside of the United States. A substantial quantity of that ammonia passed through the pipeline that is part of the Tampa Facility in the flow of and substantially affecting interstate and foreign trade and commerce. Many of the transactions related to the sale by auction of the Tampa Facility, which is the subject of this cause of action, were in the flow of and substantially affected interstate and foreign trade and commerce.

IV.

ALLEGED VIOLATION

7. During 1991 the Tampa Facility, which was then owned by the Royster Company ("Royster"), consisted of an ammonia terminal that included a storage tank and a one-half interest in a pipeline system that was connected to the tank. Defendant owned the other one-half interest in the pipeline system.

8. On April 8, 1991, Royster filed for bankruptcy protection, and in November 1991 the Federal Bankruptcy Court in the Middle District of Florida, Tampa Division, ordered that the

Tampa Facility be sold at auction. The auction was scheduled for March 12, 1992.

9. Representatives of defendant, Norsk Hydro USA Inc. ("Norsk USA"), and Farmland Industries, Inc. ("Farmland") met on March 5, 1992, at the Rihga Royal Hotel in New York, New York, and discussed sharing pipeline capacity and the cost of bidding on the Tampa Facility. At the conclusion of the meeting, defendant, Norsk USA, and Farmland reached a tentative agreement which was later reduced to writing.

10. On March 9 and March 10, 1992, representatives of defendant and Norsk USA discussed the terms of the agreement by telephone on several occasions.

11. Prior to the execution of the agreement described in paragraph 12 below, Norsk USA and Seminole were informed that a third bidder which had completed the requirements for bidding at the auction of the Tampa Facility had withdrawn from the bidding.

12. Two hours before the scheduled auction on March 12, 1992, defendant and Norsk USA executed a written agreement which provided that Norsk USA would receive bid support of up to \$2.5 million from defendant if necessary to defeat a competing bid. In exchange, Norsk USA agreed to give defendant increased pipeline capacity if Norsk USA was the successful bidder. This agreement had the effect of eliminating defendant, Norsk USA's chief rival, as a viable competing bidder for the Tampa Facility. Almost immediately after signing the agreement, defendant stated that it would not be attending the auction.

13. Moments before the beginning of the auction of the Tampa Facility, a representative of defendant appeared at the auction site and stated that defendant was withdrawing from the bidding, leaving Norsk USA as the only remaining bidder.

14. Norsk USA and Farmland intended for the Tampa Facility to be an asset of Farmland Hydro Limited Partnership ("FHLP"), a joint venture formed by them in November 1991, after the Tampa Facility had been acquired by Norsk USA.

15. Farmland participated in the negotiations leading to the March 12 agreement, assented to Norsk USA's execution of the agreement on its behalf as a partner in FHLP, and directly benefitted from the agreement because of its partnership with Norsk USA.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendant entered into an unlawful agreement in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

2. That defendant, its officers, directors, agents, employees, and successors, and all other persons acting or claiming to act on behalf of it, be enjoined, restrained, and prohibited for a period of ten years from, in any manner, directly or indirectly, soliciting, entering, or attempting to enter any agreement to submit any jointly determined bids for the acquisition of any asset used principally in the manufacture, processing, production, storage, distribution, or sale of

fertilizer or ammonia ("fertilizer asset") located in the United States with any other person that is known or reasonably should be known by defendant to be a potential bidder on the sale of that fertilizer asset or with any other person that has announced an intention to bid on the sale of that fertilizer asset;

3. That defendant, its officers, directors, agents, employees, and successors, and all other persons acting or claiming to act on behalf of it, be further enjoined, restrained, and prohibited for a period of ten years from, in any manner, directly or indirectly, soliciting, entering, or attempting to enter any agreement to set or establish the price or other terms and conditions of any bids for the acquisition of any fertilizer asset located in the United States;

4. That plaintiff have such other and further relief as the Court may deem just and proper; and

5. That plaintiff recover the costs of this action.

Dated: _____, 1997

Anne K. Bingaman
Assistant Attorney General

Karen E. Sampson

Joel I. Klein
Deputy Assistant Attorney General

Belinda A. Barnett

Rebecca P. Dick
Deputy Director of Operations

Attorneys
U.S. Department of Justice
Antitrust Division
75 Spring Street, S.W.
Suite 1176
Atlanta, Georgia 30303

John T. Orr
Chief, Atlanta Office

Charles R. Wilson
United States Attorney